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COR CLEARING, LLC
7

8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 COR CLEARING, LLC, a limited
liability company,

12 Plaintiff,

13
14 vs.

15 ASHIRA CONSULTING, LLC., a
16 limited liability company; SHEIK
FIDROSH KHAN AKA ABIDA KHAN,
17 an individual; and ALIA S. KHAN, an
individual,
18

19 Defendants.
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Case No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

1 **COMPLAINT**

2 Plaintiff COR Clearing, LLC (“Plaintiff” or “COR Clearing”), by its attorneys,
3 for its Complaint against Defendants Ashira Consulting, LLC, Sheik Fidrosch Khan
4 a/k/a Abida Khan (“Abida Khan”), and Alia S. Khan (collectively “Defendants”),
5 alleges as follows:

6
7 **NATURE OF THIS ACTION**

8 1. Plaintiff is a national securities clearing firm that provides clearing
9 and administrative services to its customers. Plaintiff seeks declaratory relief and
10 preliminary and permanent injunctions to preclude Defendants from pursuing an
11 arbitration proceeding they have improperly filed against Plaintiff before the Financial
12 Industry Regulatory Authority (“FINRA”) styled *Ashira Consulting, LLC v. COR*
13 *Clearing, LLC, et al.*, FINRA Case No. 15-02385 (the “Arbitration”).

14 2. Defendants should be enjoined from pursuing the Arbitration as
15 there is no agreement to arbitrate between Plaintiff and any Defendants that applies to
16 the subject claims because (a) Defendants Abida Khan and Ashira Consulting, LLC
17 are not, and have never been, customers of Plaintiff; and (b) Defendant Alia S. Khan’s
18 investment directly in a third party entity is not connected to COR’s business
19 activities, and therefore Defendants have no basis to bring an arbitration proceeding
20 before FINRA against Plaintiff.

21
22 **PARTIES**

23 3. At all times alleged herein, Plaintiff COR Clearing, LLC is a
24 Delaware limited liability company, with its principal place of business in Omaha,
25 Nebraska. Plaintiff is a member of FINRA and a national clearing firm that does
26 business with independent brokers across the country, including California. At all
27

1 times pertinent herein, Plaintiff also operated an equity trade execution desk that
2 transacted only unsolicited trade orders on behalf of clients.

3 4. Plaintiff is informed and believes that Defendant Sheik Fidrosh
4 Khan a/k/a Abida Khan is and was a resident of the County of Riverside, State of
5 California.

6 5. Plaintiff is informed and believes that Defendant Alia S. Khan is
7 and was a resident of the County of Riverside, State of California.

8 6. Plaintiff is informed and believes that Defendant Ashira
9 Consulting, LLC is a Nevada limited liability company that does business in
10 California, including the hiring of Defendants Abida Khan and Alia S. Khan.

11 JURISDICTION

12 7. This Court has original subject matter jurisdiction of this action
13 pursuant to 28 U.S.C. § 1331 because this action arises under the Federal Arbitration
14 Act, 9 U.S.C. § 4.

15 8. Jurisdiction is also proper pursuant to 28 U.S.C. § 1332 because
16 Plaintiff and Defendants are citizens of different states and the amount in controversy
17 exceeds \$75,000, exclusive of interests and costs. If forced to arbitrate claims that
18 Plaintiff did not agree to arbitrate before FINRA, Plaintiff will incur significant legal
19 fees and expenses in connection with defending itself against Defendants' claims, who
20 seek to recover losses totaling almost \$500,000.
21

22 VENUE

23 9. Venue is proper in this Court under 28 U.S.C. §§ 1391(a) and (c)
24 because a substantial part of the events and omissions giving rise to the claim occurred
25 in this district. Defendants brought the Arbitration in FINRA's West Regional Office,
26 which is located in Los Angeles, California.
27

FACTUAL BACKGROUND

The Arbitration

10. On September 16, 2015, Defendants initiated the Arbitration with FINRA against Plaintiff. A true and correct copy of the Statement of Claim initiating the Arbitration is attached hereto as Exhibit A. A true and correct copy of the submission agreement submitted by Defendants in connection with the Arbitration is attached hereto as Exhibit B.¹ COR Clearing was served with the Statement of Claim on September 21, 2015. COR Clearing's answer is due on November 10, 2015.

11. The Arbitration was initiated at, and is being administrated through FINRA's office in Los Angeles, California.

12. In the Statement of Claim, Defendants complain of investments they made with third party entities, VGTel, Inc. and New Market Enterprises, Inc.

13. Plaintiff is informed and believes that VGTel, Inc. and New Market Enterprises, Inc. are affiliated with an individual, Edward Durante. Edward Durante is described by the Securities Exchange Commission in 2001 as "a recidivist securities law violator." Plaintiff is informed and believes that Edward Durante operates under an alias, Kenneth Wise and/or Ted Wise, because he is barred from the securities industry and is thwarting the government's efforts to collect restitution relating to his prior conduct.

14. Defendants claim to have lost almost \$500,000 from their investments made through these third-party entities. Specifically, Ashira Consulting, LLC entered into a promissory note and with VGTel Inc. while Alia S. Khan entered into a stock purchase agreement with New Market Enterprises, Inc. for a private sale

¹ The Statement of Claim only lists Ashira Consulting, LLC as a Claimant, but the submission agreement also lists Abida Khan and Alia S. Khan as Claimants. (See Exs. A-B)

1 of existing shares of VGTel, Inc. The Statement of Claim does not contain any
2 allegations that Abida Khan individually made any investments.

3 15. In the Arbitration, Defendants seek to hold COR Clearing
4 responsible for their alleged losses despite the fact that the Statement of Claim does
5 not contain any allegations connecting COR Clearing to their investments.
6 Representing themselves, they appear to allege that COR Clearing is responsible
7 based on the following theories: (a) failure to treat Defendants in a just and equitable
8 manner; (b) negligence, gross negligence, negligent representation and omission, and
9 negligent supervision; (c) violation of FINRA Rule 2310; (d) violation of NYSE Rule
10 405; (d) violation of FINRA Rule 3010 and NYSE Rule 342; (e) fraudulent
11 misrepresentation and omission; (f) breach of contract; and (g) violation of California
12 (*sic*).

13 16. Defendants only brought this action after their efforts to recover
14 their investments from Edward Durante failed. However, Edward Durante was never
15 an employee of COR Clearing.

16 17. COR Clearing had nothing to do with Defendants' investments in
17 these third parties entities. COR Clearing did not author the promissory notes or stock
18 purchase agreement. COR Clearing also did not hold any of the notes or facilitate any
19 transactions with the purchased stock. COR Clearing never had custody of the notes
20 or agreement and, as these were not trades, COR Clearing also did not "clear" any of
21 these transactions.

22 18. COR Clearing did not sign a written contract or customer
23 agreement with Defendants Abida Khan and Ashira Consulting, LLC. This is because
24 these two Defendants do not have, and have never had, accounts at COR Clearing,
25 LLC.

1 19. While Alia S. Khan opened a self-directed trading account at COR
2 Clearing, there was never any trading activity associated with her account after it was
3 opened.

4 20. Defendants nevertheless claim that COR Clearing should somehow
5 be responsible for their losses because COR Clearing sometimes executed trades for
6 the third parties entities. However, COR Clearing simply provided the ministerial
7 services of executing unsolicited trades initiated by its customers completely unrelated
8 to these Defendants' direct investments in VGTel stock through their contracts with
9 third parties.

10
11 **COR Clearing Has No Agreement or Obligation to Arbitrate with Defendants**

12 21. Defendants Abida Khan and Ashira Consulting, LLC do not have
13 any contractual relationship with COR Clearing. Abida Khan and Ashira Consulting,
14 LLC do not have accounts with COR Clearing. COR Clearing never entered into any
15 agreement requiring that disputes between it and Abida Khan or Ashira Consulting,
16 LLC be arbitrated. Alia Khan's claims are not subject to FINRA arbitration with
17 COR because she invested directly with two different companies, unrelated to her
18 account at COR Clearing that had no activity associated with it.

19 22. Defendants have no right to bring this Arbitration against COR
20 Clearing under the FINRA Arbitration Code, which requires FINRA members to only
21 arbitrate certain disputes. In the absence of a written arbitration agreement, FINRA
22 Rule 12200 only requires members to arbitrate claims if the arbitration is requested by
23 a "customer," the dispute is "between a customer and a member or associated person
24 of a member," ***and*** the "dispute arises in connection with the business activities of the
25 member of the associated period." Defendants Abida Khan and Ashira Consulting,
26 LLC do not qualify as "customers" under FINRA Rule 12220 because they never had
27 accounts with Plaintiff. COR Clearing is also not required to arbitrate Defendant Alia
28

1 S. Khan's claims because her purchase of VGTel shares pursuant to a private stock
 2 purchase agreement with New Market Enterprises, Inc. is unrelated to COR's business
 3 activities.

4
 5 **First Claim for Relief – Declaratory Judgment**

6 **(By Plaintiff Against Defendants)**

7 23. Plaintiff realleges and incorporates by reference the foregoing
 8 paragraphs as though fully set forth herein.

9 24. No agreement to arbitrate exists between COR Clearing and any
 10 Defendant.

11 25. Defendants seek arbitration based on Rule 12200 of the FINRA
 12 Code of Arbitration by submitting their dispute to FINRA's Dispute Resolution
 13 system. However, in the absence of an agreement to arbitrate, Rule 12200 only
 14 requires arbitration if the arbitration is requested by a "customer," the dispute is
 15 "between a customer and a member or associated person of a member," **and** the
 16 "dispute arises in connection with the business activities of the member of the
 17 associated period."

18 26. Defendants Abida Khan and Ashira Consulting, LLC are not now
 19 and have never been "customers" of COR Clearing.

20 27. Defendant Alia S. Khan's investment complained of in the
 21 Arbitration is not connected to the business activities of COR Clearing.

22 28. Accordingly, COR Clearing lacks any obligation to arbitrate any
 23 claims brought by Defendants.

24 29. Declaratory relief is appropriate because the dispute between the
 25 parties is definite and concrete, affecting the parties' adverse legal interests with
 26 immediacy.

1 30. COR Clearing therefore, requests a declaratory judgment from this
2 Court that COR Clearing has no obligation to arbitrate Defendants' claims pursuant to
3 Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. § 2201.

4
5 **Second Claim for Relief – Injunctive Relief**
6 **(By Plaintiff Against Defendants)**

7 31. Plaintiff realleges and incorporates by reference the foregoing
8 paragraphs as though fully set forth herein.

9 32. COR Clearing will suffer immediate and irreparable harm if it is
10 compelled to arbitrate claims that it did not agree to arbitrate.

11 33. COR Clearing has a likelihood of success on the merits. COR
12 Clearing has no obligation to arbitrate with Defendants based on the claim asserted
13 against Plaintiff in the FINRA Arbitration. There is no applicable agreement to
14 arbitrate between COR Clearing and Defendants. Defendants Abida Khan and Ashira
15 Consulting, LLC are not "customers" of COR Clearing and the investments
16 complained of by Defendant Alia S. Khan is not connected to COR Clearing's
17 business activities as required by FINRA Rule 12200.

18 34. COR Clearing has no adequate remedy at law.

19 35. COR Clearing is entitled to preliminary and permanent injunctive
20 relief enjoining Defendants from further proceedings against COR in the arbitration.

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22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff COR Clearing demands judgment as follows:

24 A. Entry of a declaratory judgment that COR Clearing has no obligation to
25 arbitrate the claims asserted by Defendants in the FINRA Arbitration;

26 B. Entry of orders preliminarily and permanently enjoining Defendants from
27 further proceedings against COR Clearing in the FINRA Arbitration; and

1 C. Granting COR Clearing any other and further relief as the Court may
2 deem just and proper.

3
4 Respectfully submitted,

5 WINSTON & STRAWN LLP

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7 Dated: November 6, 2015 By: /s/ Gayle I. Jenkins

8 David L. Aronoff
9 Gayle I. Jenkins

10 Attorneys for Plaintiff COR Clearing, LLC
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